

### **REMARKS/ARGUMENTS**

The Final Office Action of November 14, 2006 has been carefully reviewed and these remarks are responsive thereto. Claims 1-8, 11-12, and 14-23 are pending. Claims 1-8, 12-13, 15-21 were rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,678,548 to Echauz *et al.* (“Echauz”). Claims 11, 14 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Echauz in view of U.S. Patent No. 6, 529,774 to Greene (“Greene”). Applicants respectfully traverse these rejections in light of the following remarks.

#### **Rejection under 35 U.S.C. § 102(e) – Echauz**

Claims 1-8, 12-13, and 15-21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Echauz. Applicants first note that Echauz was previously cited against the pending claims but the rationale that is being used to support the rejection has been changed. Therefore, Applicants understand that the previous ground of rejection has been withdrawn.

Turning to independent claim 1, the feature “receiving a first indication whether the treatment therapy is acceptable to the patient” is recited. The Office Action suggests that this feature is inherent in Echauz because there is continued use of the system of Echauz. Applicants note that this argument concedes the point that this feature is not expressly disclosed by Echauz. To support a suggestion that this feature is inherent in Echauz requires a showing that this feature is necessarily present in Echauz (e.g., that Echauz necessarily requires this feature to function). *See* MPEP § 2112 (IV).

Turning to the system of Echauz, there is nothing to suggest that the feature of receiving “a first indication whether the treatment therapy is acceptable to the patient” is necessarily present. Echauz discloses the use of probabilistic based detection algorithm for estimating the likelihood of a seizure and modifying treatment and also discloses a quality of life index (QOLI) to determine if the patient is improving. Echauz, Abstract. Applicants note that the QOLI could allow the physician to determine whether the treatment was successful without receipt of an indication that the treatment therapy was acceptable to the patient. In addition, analysis of the change in the number of seizures would also allow a physician to determine whether the system of Echauz was working as desired. Therefore, the continued use of a system according to Echauz does not require receipt of “a first indication whether the treatment therapy is acceptable

to the patient.” Consequentially, there is no support for the suggestion that continued use of the system of Echauz requires the receipt of “a first indication whether the treatment therapy is acceptable to the patient.” As Echauz does not necessarily require receipt of “a first indication whether the treatment therapy is acceptable to the patient,” Echauz cannot be said to inherently disclose this feature. Therefore, the system of Echauz fails to disclose receiving “a first indication whether the treatment therapy is acceptable to the patient.” As Echauz fails to disclose all the features of claim 1, Echauz cannot be said to anticipate claim 1.

Claims 2-10 and 12 depend from claim 1. Therefore, claims 2-10 and 12 are not anticipated for at least the reasons that claim 1 is not anticipated and for the additional features recited therein.

Independent claim 15 recites a feature similar to the above discussed feature of claim 1 and, for reasons similar to the reasons discussed above, Echauz fails to disclose this feature. Accordingly, as Echauz fails to disclose all the features of claim 15, Echauz does not anticipate claim 15.

Claims 16-17 depend from claim 15. Therefore, claims 16-17 are not anticipated for at least the reasons that claim 15 is not anticipated and for the additional features recited therein.

Regarding independent claim 18, the Office Action failed to provide any detailed rational for the rejection of claim but pointed to the rejection of claim 1 and the arguments provided in prior Office Actions. However, as the prior Response noted, the features of claim 18 are not identical to the features of claim 1. For example, claim 18 recites that feature of “using an output from the detection algorithm to identify at least one neurological event focus location that is associated with the neurological event” and this feature is not found in claim 1. In addition, there has been no support for the suggestion that Echauz discloses this feature in any Office Action. Therefore, no support has been provided for the suggestion that Echauz anticipates claim 18 and this rejection cannot be fairly maintained.

Claim 19 depends from claim 18. Therefore, claim 19 is not anticipated by Echauz for at least the reasons discussed above and for the additional features recited therein.

Independent claim 21 recites a feature similar to the feature discussed above with respect to claim 1. Therefore, for at least the reasons discussed above, Echauz cannot be said to anticipate claim 21.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

**Rejection under 35 U.S.C. § 103(a) – Echauz & Greene**

Claims 11, 14 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Echauz in view of Greene. Each of these claims includes a feature similar to the feature “receiving a first indication whether the treatment therapy is acceptable to the patient” recited in claim 22, either directly or due to their dependency. As noted above, Echauz fails to disclose this feature, expressly or inherently. Greene has not been suggested to correct this deficiency. Therefore, the combination of Echauz and Greene fails to disclose, suggest or teach all the features of claims 11, 14 and 22-23. Consequentially, the combination of Echauz and Greene fails to support a *prima facie* case of obviousness with respect to claims 11, 14 and 22-23 and these claims are nonobvious in view of the references of record.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

**CONCLUSION**

All rejections have been addressed. Applicants believe all pending claims are in condition for allowance and earnestly solicit prompt notification of the same.

Respectfully submitted,  
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Dated: January 15, 2006

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